

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DINO CONSTANCE,

Petitioner,

v.

DONALD HOLBROOK,

Respondent.

} CAUSE NO. C15-5426 RBL

} UPDATE REGARDING STATE COURT  
} RECORD

COMES NOW Dino Constance, the petitioner, by and through his attorney, Neil M. Fox, and provides this update regarding the state court record:

1. As noted previously, the exhibits from the evidentiary hearing were transmitted back to the Clark County Superior Court from the Court of Appeals.

2. When the undersigned counsel contacted the Clark County Clerk's Office to begin the process of reproducing the exhibits and/or to transmit them to this Court, the Clerk's office informed him, by email, on March 30, 2016 "that we will not be copying the exhibits nor will we be transmitting them to the U.S. District Court." App. A. The Clerk's office instead wished simply to return the documents to the party that offered them at the hearing. Since the most of the exhibits were offered by Mr. Constance, the undersigned counsel asked if the exhibits could be sent directly to this Court, rather than to him. He also began the

1 process of trying to obtain digital copies of the documents to be placed onto a disk. Copies of  
2 some of these email communications are attached in App. A.<sup>1</sup> The undersigned counsel has  
3 been in contact with counsel for the Respondent and the parties have been trying to figure out  
4 the best way of obtaining these records.

5 3. On April 5, 2016, at 4:10 p.m., counsel received an email from the Clark  
6 County Prosecuting Attorney's Office, with two attached letters. Copies are attached in App.  
7 B. The first letter is from Deputy Prosecutor Emily Sheldrick stating that the exhibits will be  
8 returned to the parties that offered them or destroyed within 30 days. The letter also sets out  
9 the estimated costs for copying the exhibits or for placing digital copies on disks.<sup>2</sup> Ms.  
10 Sheldrick then refers to a letter she states was sent to the undersigned counsel on March 30,  
11 2016, asking him to pick up the exhibits. There is no address on the copy of the March 30<sup>th</sup>  
12 letter attached to Ms. Sheldrick's letter; it was not referred to in the emails from that date;  
13 when the undersigned counsel spoke to Ms. Wilson on the phone on April 4, 2016, she did not  
14 mention it; and counsel only learned of its existence when it was received by email today.

15 4. In any case, counsel can certainly arrange to have the original exhibits picked  
16 up and he can then file paper copies with the court. However, counsel understands that  
17 Respondent may not have access to the copy of the exhibits that had been in the possession of  
18 the Clark County Prosecutor's Office at the time of the evidentiary hearings and the state court  
19 appeals. He therefore wants to avoid any issues about authentication.

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24 <sup>1</sup> Counsel excluded from his request the copying of Exhibit 174, which is a box of all the  
25 files given by trial counsel, Mr. Walker, to the undersigned counsel. The box includes a number of CDs  
26 and 1619 pages of documents (some of which pertain to another case). Counsel obtained a copy of this  
exhibit directly from the court in 2012, and can certainly share it with counsel for the Respondent, but  
does not need to have it reproduced at this point.

27 <sup>2</sup> Ms. Sheldrick states that to place the exhibits onto a disk, it would cost \$1400, and that  
28 placing the exhibits onto a second disk would cost another \$1070. It is not clear why the first disk could  
not simply be reproduced and copied for the cost of a CD (which has to be less than the \$20 indicated in  
the letter). In any case, counsel has not asked that the 1619 pages of Exhibit 174 be reproduced at this  
point, so the true cost should be significantly below what Clark County has estimated.

1           5.       One option is for the Court to order that the Clark County transmit all of the  
2 exhibits<sup>3</sup> directly to this Court and the clerk's office can scan the copies for counsel. That  
3 may be the easiest and most efficient remedy.

4           6.       Counsel is filing this "update" because he had noted the motion for  
5 consideration on April 8, 2016, and because Ms. Sheldrick asked that counsel submit her  
6 letter to the Court for its consideration.

7           DATED this 5<sup>th</sup> day of April 2016.

8                   Respectfully submitted,

9                   /s/ Neil M. Fox  
10                   Attorney for Petitioner  
11                   WSBA No. 15277  
                    2125 Western Ave. Suite 330  
                    Seattle, WA, 98121

12                   206-728-5440  
13                   nf@neilfoxlaw.com  
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<sup>3</sup>       This would include both the exhibits offered by Mr. Constance and those offered by the State.

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 5<sup>th</sup> day of April 2016, I electronically filed the foregoing  
3 with the Clerk of the Court using the CM/ECF system which will send notification of such  
4 filing to attorneys of record for Respondent and other parties. Counsel is sending an  
electronic version of this pleading to counsel for Clark County, Emily Sheldrick, at  
emily.sheldrick@clark.wa.gov

5 I certify or declare under penalty of perjury that the foregoing is true and correct, this  
6 5th day of April 2016 at Seattle WA.

7 /s/ NEIL M. FOX  
Neil M. Fox  
8 Attorney for Petitioner  
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## APPENDIX A

## Neil Fox

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**From:** Neil Fox  
**Sent:** Friday, April 01, 2016 11:35 AM  
**To:** 'Wilson, Baine'  
**Cc:** Hunt, Heather; Ferguson, Sharon; MandyR@atg.wa.gov  
**Subject:** RE: St v Constance 07-1-00843-8

Ms. Wilson – I would like to order a complete set of all the paper exhibits (except for Ex. 174) on a disk. Let me know how to pay for this. I would like then for the exhibits not to be returned to me, but to be sent to the US District Court – I will give you further instructions on that.

Neil M. Fox  
Law Office of Neil Fox, PLLC  
**NOTE NEW ADDRESS AND FAX # July 1, 2015**  
2125 Western Ave. Suite 330  
Seattle WA 98121  
USA

Phone: 206-728-5440  
Cell: 206-953-0233  
Fax: 866-422-0542  
Email: [nf@neilfoxlaw.com](mailto:nf@neilfoxlaw.com)

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**From:** Wilson, Baine [mailto:Baine.Wilson@clark.wa.gov]  
**Sent:** Wednesday, March 30, 2016 11:23 AM  
**To:** Neil Fox  
**Cc:** Hunt, Heather; Ferguson, Sharon  
**Subject:** RE: St v Constance 07-1-00843-8

Mr. Fox,

Ms. Ferguson has included me in this email and I need to inform you that we will not be copying the exhibits nor will we be transmitting them to the U.S. District Court. We are in the processes of returning the exhibits as the case is completed.

If you would like copies from the file we would be happy to provide those to you at the cost of .50 cents per page for uncertified copies or \$5.00 for the first page and \$1.00 for each additional page for certified copies. Another option is a CD at a cost of .25 cents per page and \$25.00 for the CD.

If you believe it is our duty to copy and transmit these documents please provide the Court Rule or Order that requires the transfer of clerk's papers.

Sincerely,

*Baine Wilson*

Chief Deputy Clerk  
Clark County Clerk's Office  
PO Box 5000  
Vancouver, WA 98666-5000  
360-397-2292 ext 4242  
[baine.wilson@clark.wa.gov](mailto:baine.wilson@clark.wa.gov)

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**From:** Ferguson, Sharon  
**Sent:** Tuesday, March 29, 2016 9:27 AM  
**To:** 'Neil Fox'  
**Cc:** Hunt, Heather; Wilson, Baine  
**Subject:** RE: St v Constance 07-1-00843-8

Good morning Neil,

In response to your e-mail, will you please let me know if you are specifically asking me to copy and transfer exhibits to the U.S. District Court on the Dino Constance case.

Thank you,  
Sharon Ferguson



Sharon Ferguson  
Clark County Clerk's Office  
Senior Court Assistant  
360 397 2292 ext. 4251  
[Sharon.ferguson@clark.wa.gov](mailto:Sharon.ferguson@clark.wa.gov)

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**From:** Neil Fox [<mailto:nf@neilfoxlaw.com>]  
**Sent:** Tuesday, March 29, 2016 8:21 AM  
**To:** Ferguson, Sharon  
**Cc:** Hunt, Heather; [MandyR@atg.wa.gov](mailto:MandyR@atg.wa.gov)  
**Subject:** RE: St v Constance 07-1-00843-8

Ms. Ferguson and Ms. Hunt – I would like to begin the process of reproducing the paper copies of the exhibits the clerk's office just received back from the Court of Appeals, and having them transmitted to the U.S. District Court, along with copies of certain portions of the court file. I would also need copies of all such documents sent to me and to the Attorney General's Office (Ms. Rose is cc'd on this email). Can you please let me know how long this may take and the costs involved? Thank you very much.

Neil M. Fox  
Law Office of Neil Fox, PLLC  
**NOTE NEW ADDRESS AND FAX # July 1, 2015**  
2125 Western Ave. Suite 330  
Seattle WA 98121  
USA

Phone: 206-728-5440  
Cell: 206-953-0233

Fax: 866-422-0542  
Email: [nf@neilfoxlaw.com](mailto:nf@neilfoxlaw.com)

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**From:** Ferguson, Sharon [<mailto:Sharon.Ferguson@clark.wa.gov>]  
**Sent:** Friday, March 25, 2016 8:21 AM  
**To:** Neil Fox  
**Cc:** Hunt, Heather  
**Subject:** RE: St v Constance 07-1-00843-8

Good morning,  
This e-mail is to notify you that we received three boxes of Dino Constance exhibits from the COA on 03-24-16



Sharon Ferguson  
Clark County Clerk's Office  
Senior Court Assistant  
360 397 2292 ext. 4251  
[Sharon.ferguson@clark.wa.gov](mailto:Sharon.ferguson@clark.wa.gov)

---

**From:** Hunt, Heather  
**Sent:** Wednesday, March 23, 2016 10:11 AM  
**To:** 'Neil Fox'  
**Cc:** Ferguson, Sharon  
**Subject:** RE: St v Constance 07-1-00843-8

We have not received them from the Court of Appeals yet. I did confirm they have been sent.

**Heather Hunt**  
Senior Court Asst. | Appeals Clerk | Civil Lead  
**Clark County Clerk's Office**  
1200 Franklin St Vancouver, WA 98660  
360.397.2292 ext. 4371  
[heather.hunt@clark.wa.gov](mailto:heather.hunt@clark.wa.gov)



## Neil Fox

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**From:** Neil Fox  
**Sent:** Wednesday, March 30, 2016 12:41 PM  
**To:** 'Wilson, Baine'  
**Cc:** Hunt, Heather; Ferguson, Sharon; MandyR@atg.wa.gov  
**Subject:** RE: St v Constance 07-1-00843-8  
**Attachments:** Doc 62-13 Proposed order.pdf; Doc 62 Motion to complete record and to continue.pdf

Hi -- I am attaching a copy of the motion and proposed order for the transfer of documents to the US District Court which was filed yesterday. This is noted for Judge Leighton's consideration on 4/8/11.

Regarding the return of the exhibits – almost all of them were exhibits **that I offered**, so this may not be an issue.. I may simply want my copies sent to the U.S. District Court (after I get a CD made of the copies myself). I would also like copies of the exhibits offered by the State before you return those to the prosecutors. I will get back to you about certified or non-certified.

DO NOT DESTROY ANY OF THESE EXHIBITS as, you can see, there is litigation pending in US District Court about this case. I also want my exhibits returned to me if you are not going to hang on to them.

I am cc'ing Mandy Rose from the Attorney General's Office who represents the respondent in federal court.

Thank you.

Neil M. Fox  
Law Office of Neil Fox, PLLC  
**NOTE NEW ADDRESS AND FAX # July 1, 2015**  
2125 Western Ave. Suite 330  
Seattle WA 98121  
USA

Phone: 206-728-5440  
Cell: 206-953-0233  
Fax: 866-422-0542  
Email: [nf@neilfoxlaw.com](mailto:nf@neilfoxlaw.com)

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**From:** Wilson, Baine [mailto:Baine.Wilson@clark.wa.gov]  
**Sent:** Wednesday, March 30, 2016 11:23 AM  
**To:** Neil Fox  
**Cc:** Hunt, Heather; Ferguson, Sharon  
**Subject:** RE: St v Constance 07-1-00843-8

## APPENDIX B

## Neil Fox

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**From:** Davis, Nicole <Nicole.Davis@clark.wa.gov>  
**Sent:** Tuesday, April 05, 2016 4:10 PM  
**To:** Neil Fox  
**Cc:** Sheldrick, Emily; Wilson, Baine; 'mandyr@atg.wa.gov'  
**Subject:** Constance v. Hollbrook USDC #3:15-cv-05426-RBL  
**Attachments:** SMSPAX00416040516150.pdf

Mr. Fox –

Please see the attached communication from Emily Sheldrick, Sr. Deputy Prosecuting.

*Nicole Davis*

Legal Assistant  
Clark County Prosecuting Attorney's Office  
Civil Division  
(360) 397-2478 x5277

This e-mail and related attachments and any response may be subject to public disclosure under state law.



PROSECUTING ATTORNEY | ANTHONY F. GOLIK

SCOTT D. JACKSON  
Chief Deputy

CAMARA L. J. BANFIELD  
Chief Criminal Deputy

CHRISTOPHER HORNE  
Chief Civil Deputy

SHARI JENSEN  
Administrator

April 5, 2016

**Via Email**

Mr. Neil Fox  
Law Office of Neil Fox, PLLC  
2125 Western Avenue Ste 330  
Seattle, WA 98121  
nf@neilfoxlaw.com

RE: Constance v. Hollbrook  
USDC Case 3:15-cv-05426-RBL

Dear Mr. Fox:

I represent the Clark County Superior Court Clerk. Bain Wilson with the Clerk's Office asked me to contact you regarding your request for copies of exhibits and court pleadings with respect to State of Washington vs. Dino Constance, Clark County Cause No. 07-1-00843-8. I understand that you have filed a motion in with the U.S. District Court to require the Clerk's Office to make copies of exhibits and pleadings from the Clark County Superior Court Case and transmit one set of copies to you and a second set to the U.S. District Court. Please submit this letter to Judge Leighton for the court's consideration.

The Clerk's Office received the exhibits from the Court of Appeals the exhibits in the case State of Washington vs. Dino Constance, Clark County Cause No. 07-1-00843-8. On March 30<sup>th</sup>, 2016, the Clerk sent you a letter stating that the exhibits were ready for pick-up and should be picked up by May 1<sup>st</sup>. Please see attached letter. As of today's date, you have not picked up the exhibits. The Clerk's Office does not scan or retain copies of the exhibits. By normal process, the Clerk's Office contacts each party to return the exhibits once the appeal process is concluded. If the parties do not pick up the exhibits, the exhibits are destroyed.

You recently requested the Clerk's Office copy the exhibits and transmit those exhibits to the U.S. District Court and make a second copy to transmit to your office. Your request would require extensive time for the Clerk's Office. The Clerk estimates that there are approximately 200 pages of Prosecutor's Office exhibits and 4,200 pages of exhibits offered by the defense. The Clerk charges \$30.00/hour for scanning these exhibits and \$.25 per page. In addition, each

CD costs \$20.00. The Clerk estimates it will take eight (8) hours to scan these documents. Therefore, the Clerk estimates the cost for one set of exhibits will be \$1,400. A second set of exhibits is estimated to cost \$1,070. In addition, the pleadings that you have requested would cost \$.25/page and \$20 for the CD. The Clerk's Office has not estimated the cost for providing these copies. Finally, the Clerk's Office will charge for postage costs to mail the CDs.

Please submit a deposit of \$2,000.00 for initiating this project. Once the project is complete, the Clerk's Office will send you an invoice for final payment prior to mailing the records.

Alternatively, you may pick up the defense exhibits from the Clerk's Office and request a copy of the Prosecutor's exhibits as a public records request. Please note that records responsive to a public records request will be reviewed for statutory redactions and exemptions. There is also a fee involved with providing responsive records.

Yours very truly,

A handwritten signature in cursive script, reading "Emily Sheldrick".

Emily A. Sheldrick

Clark County Senior Deputy Prosecuting Attorney, Civil Division

Tel: (360) 397-2478 ext. 4956

/nd

Enc.

cc: Bain Wilson: [bain.wilson@clark.wa.gov](mailto:bain.wilson@clark.wa.gov)

Mandy Rose: [mandyr@atg.wa.gov](mailto:mandyr@atg.wa.gov)

US District Court Clerk: 1717 Pacific Avenue, Room 3100, Tacoma, WA 98402-3200



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Vancouver, WA 98666-5000  
360-397-2292 Fax 360-397-6099  
[www.clark.wa.gov](http://www.clark.wa.gov)

**Date: 03-30-16**

**Attorney: Neil Fox**

**Re: 07 1 00843 8**

**Name: State of Washington v Dino Constance**

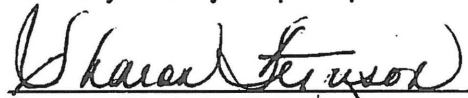
Dear Sir/Madame:

The above-referenced case is completed, a thirty day time period for filing an appeal has expired, or a Mandate has been filed. Please consider this letter as the required thirty day notice for the disposition of exhibits.

Per a Stipulation & Order entered in this case, you requested these exhibits be returned to you. In order to retrieve these exhibits, you or someone from your office must sign for them and pick them up from the clerk's office by \_\_ 05-01-16 \_\_.

**AFTER THIS DATE, THE EXHIBITS WILL BE DESTROYED.**

Thank you for your prompt attention to this matter.

  
Deputy Clerk for Exhibits

**Copy Distributions:** White-Case file, Pink-Attorney Plaintiff, Canary-Attorney Defendant, Goldenrod-Police Agency

3/30/2016 H:Records-Exhibits/ Exhibits/PA letter return exhibits